

EXHIBIT K

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Rachel A. Earl,
Plaintiff,

vs.

Freedom Home Mortgage Corp., et al.,
Defendants.

No. CV-10-00678-PHX-ROS

ORDER

Defendants Mark S. Bosco, Michael A. Bosco, Jr., Wells Fargo Bank, N.A., and Freedom Home Mortgage Corporation have moved to dismiss Plaintiff's complaint. Plaintiff has not file an opposition. Local Rule 7.2(i) provides a party's failure to file and serve a required answering memoranda, "may be deemed a consent to the . . . granting of the motion." Having considered the relevant factors, the motions to dismiss will be granted. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (outlining factors to consider when dismissing for failure to follow local rule).

Accordingly,

IT IS ORDERED the Motions to Dismiss (Doc. 8, 9, 10) are **GRANTED WITH LEAVE TO AMEND**. Plaintiff shall file her amended complaint no later than May 28, 2010.

DATED this 18th day of May, 2010.



Roslyn O. Silver
United States District Judge

EXHIBIT L

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

<input checked="checked" type="checkbox"/> FILED	<input type="checkbox"/> LODGED
<input type="checkbox"/> RECEIVED	<input type="checkbox"/> COPY
JUL 12 2010	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	P DEPUTY

**Rachael A. Earl
1311 S. Claiborne Ave.
Gilbert, AZ 85296**

PLAINTIFF

V.

**FREEDOM HOME MORTGAGE
CORPORATION, et al**

DEFENDANT

Case No. 2:10-CV-00678-ROS

**PLAINTIFF'S MOTION TO
DISMISS COMPLAINT WITHOUT
PREJUDICE**

PLAINTIFF'S MOTION TO DISMISS COMPLAINT WITHOUT PREJUDICE

AND NOW, comes Plaintiff, Rachael Earl, proceeding for the moment, pro se, who respectfully requests this Honorable Court to grant this Motion to Dismiss Without Prejudice with regards to the complaint filed on or about February 19, 2010. In support of this Motion, Plaintiff hereby avers as follows:

1. On or about February 19, 2010, Plaintiff filed in the Superior Court of Maricopa County, Arizona, a Verified Complaint for

Declaratory and Injunctive Relief, docketed as CV2010-090616.

2. On or about March 4, 2010, Plaintiff filed for Chapter 13 Bankruptcy protection, docketed as 2:10-bk-05650-RJH.
3. On or about March 25, 2010, Defendants responded to Plaintiff's Complaint by notice for Federal Removal, and case is now apparently docketed as 2:10-CV-00678-ROS in Federal Court.
4. According to the Federal Docket, during the month of April, 2010, Defendants Mark S. Bosco, Michael A. Bosco Jr., Wells Fargo Bank, N.A., and Freedom Home Mortgage Corporation all filed Motions to Dismiss Case.
5. On or about May 17, 2010, an order was signed granting a Removal of Stay against Plaintiff on the property at 1311 S. Claiborne Ave, Gilbert, AZ 85296.
6. On or about May 21, 2010, Plaintiff received another order granting Defendants' Motions to Dismiss and allowing Plaintiff until May 28, 2010 to file an amended complaint.

7. On or about May 28, 2010, Plaintiff filed a Motion for an Enlargement of Time due to exigent circumstances surrounding the birth of her child.
8. Plaintiff now requests this Honorable Court to dismiss this case without prejudice, as circumstances for the Plaintiff do not allow her to proceed in a timely manner on this case at this time.
9. Plaintiff believes, and therefore avers, that neither the Court or the Defendants will be harmed should this Court properly grant Plaintiff's request without prejudice.

WHEREFORE, Plaintiff respectfully moves upon this Honorable Court for a dismissal of this case without prejudice.


Rachael Earl, Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

**Rachael A. Earl
1311 S. Claiborne Ave.
Gilbert, AZ 85296**

PLAINTIFF

V.

**FREEDOM HOME MORTGAGE
CORPORATION, et al**

DEFENDANT

Case No. 2:10-CV-00678-ROS

**PLAINTIFF'S MOTION TO
DISMISS COMPLAINT WITHOUT
PREJUDICE**


MOTION TO DISMISS COMPLAINT WITHOUT PREJUDICE

CERTIFICATE OF SERVICE

Plaintiff hereby declares that the above referenced document has been sent to the addresses listed below and served by U.S. Certified Mail Registered Number

Tiffany and Bosco
2525 East Camelback Road #300
Phoenix, AZ 85016

Snell & Wilmer
400 E. Van Buren Street
Phoenix, Arizona 85004



Rachael A. Earl

EXHIBIT M

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Rachel A. Earl,
Plaintiff,

vs.

Freedom Home Mortgage Corp., et al.,
Defendants.

No. CV-10-00678-PHX-ROS

ORDER

Plaintiff requests this case be dismissed without prejudice. (Doc. 15). One defendant has indicated no opposition to this request.

Accordingly,

IT IS ORDERED the Motion to Dismiss (Doc. 15) is **GRANTED**. This case is **DISMISSED WITHOUT PREJUDICE**.

DATED this 10th day of August, 2010.



Roslyn O. Silver
United States District Judge

EXHIBIT N

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Rachel A. Earl,)	JUDGMENT OF DISMISSAL
)	IN A CIVIL CASE
Plaintiff,)	
)	CV 10-678 PHX-ROS
v.)	
)	
Freedom Home Mortgage Corp.; et al.,)	
)	
Defendant(s).)	

____ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X Decision by Court. This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that pursuant to the Court's order dated August 11, 2010, Plaintiff to take nothing, and complaint and action are dismissed without prejudice.

RICHARD H. WEARE
District Court Executive/Clerk

August 11, 2010

s/ Linda S Patton
By: Deputy Clerk

cc: (all counsel)

EXHIBIT O

IT IS HEREBY ADJUDGED
and DECREED this is SO
ORDERED.

The party obtaining this order is responsible for
noticing it pursuant to Local Rule 9022-1.

Dated: May 17, 2010



TIFFANY & BOSCO
P.A.

2525 EAST CAMELBACK ROAD
SUITE 300
PHOENIX, ARIZONA 85016
TELEPHONE: (602) 255-6000
FACSIMILE: (602) 255-0192

Randolph J. Haines

RANDOLPH J. HAINES
U.S. Bankruptcy Judge

Mark S. Bosco
State Bar No. 010167
Leonard J. McDonald
State Bar No. 014228
Attorneys for Movant

10-01475

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

IN RE:
Rachael Anne Earl
Debtors.

U.S. Bank National Association, as Trustee for
GSAA 2007-9 by its Attorney in fact Wells Fargo
Bank, N.A., successor by merger to Wells Fargo
Home Mortgage Inc.

Movant,

vs.

Rachael Anne Earl
Debtors; Edward J. Maney, Trustee.

Respondents.

No. 2:10-bk-05650-RJH

Chapter 13

ORDER

(Related to Docket #19)

Hearing Date: May 12, 2010

IT IS HEREBY ORDERED that all stays and injunctions, including the automatic stays imposed
by U.S. Bankruptcy Code 362(a) are hereby terminated as to Movant with respect to that certain real
property which is subject of a Deed of Trust dated April 12, 2007, and recorded in the office of the
Maricopa County Recorder wherein U.S. Bank National Association, as Trustee for GSAA 2007-9 by its

1 Attorney in fact Wells Fargo Bank, N.A., successor by merger to Wells Fargo Home Mortgage Inc. is the
2 current beneficiary and Rachael Anne Earl has an interest in, further described as:

3 Lot 196, AGRITOPIA, PHASE 2A, according to Book 691 of Maps, Page 4, and Affidavit of
4 Correction recorded as 2004-1145385, records of Maricopa County, Arizona.

5 IT IS FURTHER ORDERED that this Order vacating the automatic stay imposed by U.S.
6 Bankruptcy Court Code 362(a) shall be binding and effective in the event the Debtor converts this case to
7 another chapter under the U.S. Bankruptcy Code.

8
9
10 UNITED STATES BANKRUPTCY JUDGE

Notice Recipients

District/Off: 0970-2
Case: 2:10-bk-05650-RJH

User: radickem
Form ID: pdf004

Date Created: 5/18/2010
Total: 4

Recipients of Notice of Electronic Filing:

tr	EDWARD J. MANEY	courtecf@maney13trustee.com
aty	MARK I BOSCO	ecf@tblaw.com

TOTAL: 2

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	RACHAEL ANNE EARL	1311 S. CLAIBORNE AVE.	GILBERT, AZ 85296
aty	RONALD L. HOFFBAUER	EDWARD J. MANEY, CHAPTER 13 TRUSTEE	P.O. BOX
	10434	PHOENIX, AZ 85064	

TOTAL: 2

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:

Case No.: 2:10-bk--05650-RJH

RACHAEL ANNE EARL
1311 S. CLAIBORNE AVE.
GILBERT, AZ 85296
SSAN: xxx-xx-3449
EIN:

Chapter: 13

Debtor(s)

NOTICE OF ENTRY OF JUDGMENT OR ORDER

You are hereby notified that on May 18, 2010, this Court entered the enclosed judgment or order on the docket for the above-entitled proceeding.

I hereby certify that on this date a copy of this notice and the judgment or order were sent to the Bankruptcy Noticing Center for mailing to the parties and the U.S. Trustee.

Date: May 18, 2010

Address of the Bankruptcy Clerk's Office:

U.S. Bankruptcy Court, Arizona
230 North First Avenue, Suite 101
Phoenix, AZ 85003-1727
Telephone number: (602) 682-4000
www.azb.uscourts.gov

Clerk of the Bankruptcy Court:

Brian D. Karth

Notice Recipients

District/Off: 0970-2
Case: 2:10-bk-05650-RJH

User: radickem
Form ID: ntentry

Date Created: 5/18/2010
Total: 4

Recipients of Notice of Electronic Filing:

tr	EDWARD J. MANEY	courtecf@maney13trustee.com
aty	MARK I BOSCO	ecf@tblaw.com

TOTAL: 2

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	RACHAEL ANNE EARL	1311 S. CLAIBORNE AVE.	GILBERT, AZ 85296
aty	RONALD L. HOFFBAUER	EDWARD J. MANEY, CHAPTER 13 TRUSTEE	P.O. BOX
	10434	PHOENIX, AZ 85064	

TOTAL: 2

EXHIBIT P

IT IS HEREBY ADJUDGED
and DECREED this is
DENIED.



Dated: May 24, 2010

UNITED STATES BANKRUPTCY
FOR THE DISTRICT OF

Randolph J. Haines

IN RE:

Rachael Earl
Debtor/Movant

CH RANDOLPH J. HAINES
U.S. Bankruptcy Judge
Case No.: 2:10-bk-05650-RJH

EMERGENCY MOTION TO
REINSTATE AUTOMATIC STAY
OR IN THE ALTERNATIVE
GRANT TEMPORARY
RESTRAINING ORDER

ORDER

AND NOW, this ____ day of May, 2010 upon consideration of Debtor/Movant's
Motion to Reinstate Debtor/Movant's Automatic Stay, or in the alternative, Grant
Debtor/Movant's Temporary Restraining Order,

IT IS HEREBY ORDERED:

Debtor/Movant's Emergency Motion to Reinstate the Automatic Stay,
or in the alternative,

Debtor/Movant's Emergency Motion for Temporary Restraining Order,

Is hereby GRANTED.

It is Further ORDERED:

US Bank be enjoined from proceeding with Forcible Detainer proceedings upon Debtor
regarding the residence at 1311 S. Claiborne Ave., Gilbert, AZ 85296.

BY ORDER OF THE COURT:

Notice Recipients

District/Off: 0970-2
Case: 2:10-bk-05650-RJH

User: radickem
Form ID: pdf008

Date Created: 5/25/2010
Total: 1

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	RACHAEL ANNE EARL	1311 S. CLAIBORNE AVE.	GILBERT, AZ 85296
----	-------------------	------------------------	-------------------

TOTAL: 1

EXHIBIT Q

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-006146

08/19/2010

COMMISSIONER MICHAEL L. BARTH

CLERK OF THE COURT
C. Saunders
Deputy

U S BANK NATIONAL ASSOCIATION

LEONARD J MCDONALD

v.

RACHAEL EARL

KEVIN L JENSEN

MINUTE ENTRY

Courtroom OCH-005

2:47 p.m. This is the time set for Forcible Detainer Trial to the Court, continued from August 3, 2010. Counsel Leonard McDonald is present appearing on behalf of the Plaintiff. Defendant Rachael Earl is present with local counsel, Kevin Jensen, and *pro hac vice* applicant Michael Pines.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Discussion is held regarding Counsel Pines' *pro hac vice* status. This Court did not receive a copy of the filed Application.

Plaintiff has no objection to the Application.

To allow the Court to review the appropriate Rule and the Application,

3:00 p.m. The Court stands at recess.

Docket Code 049

Form V000A

Page 1

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-006146

08/19/2010

3:18 p.m. Court reconvenes with the parties and respective counsel present.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

The Court having reviewed the applicable Rule, Plaintiff having no objection, and good cause appearing,

IT IS ORDERED granting temporary *pro hac vice* admission of Counsel Michael Pines on behalf of the Defendant in this matter only.

The Court notes that Plaintiff's Motion for Judgment on the Pleadings remains to be addressed. The Court is presented with Defendant's Opposition to Plaintiff's Motion for Judgment on the Pleadings which does not appear to have been previously filed.

There being no objection,

IT IS ORDERED directing the Clerk to file Defendant's Opposition to Plaintiff's Motion for Judgment on the Pleadings.

Oral argument is heard regarding the Plaintiff's Motion and Defendant's Opposition thereto.

Defendant opposes the Motion and Defendant asserts that Plaintiff was without standing to bring the action on the basis of alleged defects/irregularities in the Trustee's sale and Trustee's Deed of Trust. The Court shall take Judicial Notice of the certified copy of the Trustee's Deed Upon Sale provided by Plaintiff.

Having considered the Motion, Response thereto, the arguments presented, and review of the Trustee's Deed,

IT IS ORDERED granting Plaintiff's Motion for Judgment on the Pleadings, this Court finding no triable/material issues of fact.

Based upon matters presented to the Court,

THE COURT FINDS Defendant Rachael Earl guilty of forcible detainer.

IT IS ORDERED granting judgment in forcible detainer against Defendant Rachael Earl and in favor of Plaintiff, all in accordance with the formal written Judgment signed by the Court on August 19, 2010 and entered (filed) by the Clerk on August 19, 2010.

Docket Code 049

Form V000A

Page 2

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-006146

08/19/2010

IT IS FURTHER ORDERED that a Writ of Restitution may issue on or after August 25, 2010.

Discussion is held regarding Defendant's intention to file a Bankruptcy Petition following the conclusion of this trial. No further action is taken by the Court.

3:45 a.m. Matter concludes.

FILED: Summons

Affidavit of Service of Process

Opposition to Plaintiff's Motion for Judgment on the Pleadings

LATER:

The Court signs this minute entry as an enforceable Order.

/ s / COMMISSIONER MICHAEL L. BARTH

JUDICIAL OFFICER OF THE SUPERIOR COURT

EXHIBIT R

LAW OFFICES OF KEVIN JENSEN, PLLC
ATTORNEYS and COUNSELORS at LAW
3740 EAST SOUTHERN AVE.
SUITE 210
MESA, ARIZONA 85206
TELEPHONE (480) 632-7373
FACSIMILE (480) 632-8383

Kevin Jensen, State Bar No. 021524

Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

U.S. Bank National Association, as Trustee for
GSAA 2007-9 by its Attorney in fact Wells
Fargo Bank, N.A., successor by merger to
Wells Fargo Home Mortgage Inc.

Plaintiff

vs.

Rachael Earl; John Does I-X, JOHN DOE
OCCUPANT 1-5 AND JAME DOE
OCCUPANT 1-5,

Defendant.

NO: CV2010-006146

**OPPOSITION TO PLAINTIFF'S
MOTION FOR JUDGMENT ON
THE PLEADINGS**

**Forcible Detainer after Trustee's
Sale pursuant to A.R.S. [13-1173.01,
et seq.]**

Defendants Rachael Earl and Dan Earl ("Earls" or "Defendants") by and through counsel undersigned, hereby submits their Opposition to Plaintiff's Motion for Judgment on the Pleadings and requests that the Court deny Plaintiff's Motion and allow this matter to proceed to a jury trial. The Court should deny Plaintiff's motion because there are issues of fact for a jury to decide, including, among other things whether Plaintiff is the real party in interest; whether the trustee's sale was properly conducted, and whether Plaintiff has any right to possession of the property. Defendants' position is set forth and based upon the following Memorandum of Points and Authorities as well as the documents attached hereto.

I. Statement of Facts

On January 16, 2009, Mortgage Electronic Registration Systems, Inc. (“MERS”) recorded a Corporation Assignment of Deed of Trust wherein MERS assigns and transfers beneficiary status to U.S. Bank National Association, as Trustee for GSAA 2007-9. *See Exhibit 4.* The Corporation Assignment of Deed of Trust is executed by Jennifer Hamlin as an Assistant Secretary for MERS, Inc. *See id.* Jennifer Hamlin is an employee and notary for Plaintiff’s attorney Tiffany & Bosco. *See Exhibits 6 & 7.* The Corporation Assignment of the Deed of

1 Trust was notarized by Ann Armstrong, also a notary employed by Plaintiff's Attorney Tiffany
2 & Bosco. Notably, the Assignment is backdated to December 8, 2008 apparently to validate
3 U.S. Bank's authority to issue a timely Notice of Default as required by the Deed of Trust.

4 Also on January 16, 2009, a Substitution of Trustee was executed by Mark S. Bosco, by
5 Limited Power of Attorney wherein he appoints his father, Michael A. Bosco, Jr. as the
6 Successor Trustee. *See Exhibit 8.* There is no basis or authority for Mark Bosco to make this
7 transfer, thus rendering the Substitution of Trustee invalid.
8

9 Moreover, the Assignment is backdated as to the effective date to December 2008,
10 apparently in an attempt to establish that US Bank had authority to issue a timely Notice of
11 Default, as required by the Deed of Trust, which was never issued or recorded.

12 A purported Substitution of Trustee was also signed on January 15, 2009, by Mark S.
13 Bosco "By Limited Power of Attorney", substituting Michael A. Bosco Jr. his father, as trustee.
14 There is no document in existence granting Mark S. Bosco authority to act on behalf of US Bank
15 National Association as Trustee for GSAA 2007-9.
16

17 On January 14, 2010, the Defendants' property was sold at an invalid and improper
18 Trustees' Sale as indicated by the Trustees' Deed attached to Plaintiff's Complaint. The
19 Trustees' Deed was executed by Michael A. Bosco, Jr. and notarized by Paula Gruntneir on
20 January 14, 2010. The digital signature for both Mr. Bosco and Ms. Gruntneir show a time
21 stamp of 07:00 on 1/14/2010. The document appears to have been executed prior to the time the
22 property could even be sold under Arizona law.
23

24 II. Legal Argument

25 A. The Trustee's Sale is Void Because it was Based on Fraud, Misrepresentation 26 and Concealment.

27
28

1 Issues of fact for a jury remain regarding possession in this matter because the January
2 14, 2010 Trustee's Sale is void due to Plaintiff's fraud, misrepresentation and concealment of
3 facts regarding the real owner of the Note and Deed of Trust and the authority to hold a Trustee's
4 sale. Arizona law is clear that "[a] foreclosure sale is void if there are grounds for equitable
5 relief based on serious sale defects, including deliberate notice failure, fraud, misrepresentation,
6 or concealment." *In re Hills*, 299 B.R. 581, 586 (Bkrtcy.D.Ariz., 2002)(quoting *Main I Ltd.*
7 *Partnership v. Venture Capital Const. & Dev. Corp.*, 154 Ariz. 256, 260, 741 P.2d 1234 (App.
8 1987)). While it is true that the merits of title may not be litigated in a Forcible Detainer action,
9 the fact of title may be proved as a matter incidental to showing right of possession by an owner.
10 See *Andreola v. Arizona Bank*, 26 Ariz.App. 556, 557, 550 P.2d 110, 111 (Ariz.App. 1976).

11
12 In this case, judgment on the pleadings is inappropriate because the documents relied
13 upon to proceed with the purported Trustees' Sale are rife with inconsistencies, fraud and
14 misrepresentations that call in the question the validity of the sale itself. If the sale is invalid
15 then Plaintiff has no right to possession of the property. These questions of fact must be allowed
16 to be presented to a jury. A review of the documents relied upon by Plaintiff to proceed with the
17 Trustees' Sale and this matter easily demonstrate the fraud and missteps of the Plaintiffs
18 throughout this matter.

19
20 1. The Power of Attorney¹ granting Attorney in Fact status to Wells Fargo from US
21 Bank has been found by the US Bankruptcy Court to be "Internally inconsistent" and "defective"
22 and was thrown out by a Bankruptcy Judge in *In Re Wells*, 407 BR 873 (N.D. Ohio, 2009). In
23 the *Wells* case the Grantor is US Bank National Association, but it is executed by US Bank
24
25
26

27 ¹ See Exhibit 2.
28

1 National Association, as Trustee. The Power of Attorney needs to state "US Bank National
2 Association as Trustee for GSAA 2007-9" as Grantor and Executed by the same party.

3
4 2. The Power of Attorney granting Attorney in Fact status to Mark and Michael
5 Bosco from Wells Fargo is incomplete. The form lists 30th of October as the date with no year in
6 three separate places, including the jurat. There is no evidence as to when this document was
7 executed. ARS 41-328 (A) A notary public shall not perform a jurat on a document that is
8 incomplete. The notary jurat has also been altered to show a date of 2008, but appears the
9 original expiration date on the notary stamp was 2005. The handwriting stating "My
10 Commission Expires May 28, 2008" is in a different handwriting than the notary, Anne Nelson
11 (based upon other notarized documents from the same notary pulled from the Polk Iowa County
12 Recorder).

13
14 3. There is no chain of command, and no foundation has been established for the
15 Plaintiff's one piece of evidence, the Trustee's Deed Upon Sale. Pursuant to Rule 901 of the
16 Federal Rules of Evidence the Trustees' Deed Upon Sale is not admissible.

17
18 4. None of the parties in the chain of transfer have any standing to bring the action
19 as they are not the Holder in Due Course as pursuant to UCC 3-302. They have submitted no
20 proof of legal possession other than the fact that they conducted the sale.

21
22 5. The Corporation Assignment of Deed of Trust "grants" beneficiary status from
23 MERS to US Bank National Association, as Trustee for GSAA 2007-9. The document is signed
24 by Jennifer Hamlin, who purports that she is the Assistant Secretary of MERS, when in fact she
25 works for Tiffany and Bosco. Jennifer Hamlin was a Notary with Tiffany and Bosco at the time
26 of signing and we obtained from the Secretary of State (Notary document with State seal and a
27 signed letter from the SOS) evidence that she lists Tiffany and Bosco as her employer. There is
28

1 no Power of Attorney granting Jennifer Hamlin authority to sign for MERS, nor is there any
2 evidence suggesting that she has any authority from them.

3 6. The Substitution of Trustee is signed by Mark Bosco (as Attorney in Fact for
4 Wells Fargo) granting Trustee status to his father, Michael Bosco. The Power of Attorney
5 granting Mark Bosco authority from Wells Fargo has already been found to be invalid, so Mark
6 Bosco has no authority to transfer anything.

7
8 7. The alleged note is not recorded, and pursuant to ARS 33 411-412, it MUST be
9 recorded or it is invalid as to creditors.

10 8. US Bank is not the Real Party in Interest. In re Jacobson US Bankruptcy Court:
11 "Whoever is entitled to enforce the obligation sought to be enforced. Even if a servicer or agent
12 has authority to bring the motion on behalf of the holder, it is the holder, rather than the servicer,
13 which must be the moving party, and so identified in the papers and in the electronic docketing
14 done by the moving party's counsel."

15
16 In short, there are numerous "questionable" issues that are raised by the trust documents
17 in this case. Plaintiff should be required to respond and answer to these issues of apparent fraud.
18 At a minimum, there are numerous questions of fact that prohibit granting Plaintiff's motion and
19 allowing this matter to be decided by a jury.

20
21 **B. The Trustee's Sale is Void and Plaintiff is not Entitled to Possession Because**
22 **Defendants Did Not Receive a Notice of Default as Required by the Deed of Trust.**

23 A.R.S. § 33-808 sets forth the notice requirements for a trustees' sale and provides as
24 follows:

25 A. The trustee shall give written notice of the time and place of the sale
26 legally describing the trust property to be sold *by each of the following methods:*

27 ...
28

1
2 3. Posting a copy of the notice of sale, at least twenty days before the date
3 of sale in some conspicuous place on the trust property to be sold, if posting
4 can be accomplished without a breach of the peace. If access to the trust property
5 is denied because a common entrance to the property is restricted by a limited
6 access gate or similar impediment, the property shall be posted by posting notice
7 at that gate or impediment. Notice shall also be posted at one of the places
8 provided for posting public notices at any building that serves as a location of the
9 superior court in the county where the trust property is to be sold. Posting is
10 deemed completed on the date the trust property is posted. The posting of notice
11 at the superior court location is deemed a ministerial act.

12 Defendant never received written notice of the Trustee's Sale as required by Arizona law.
13 No notice was ever posted in a conspicuous place (or any other place) on the trust property as
14 required. Plaintiff has simply failed to proceed as required by Arizona law and should not be
15 allowed to unlawfully take Defendant's property under the guise of having conducted a proper
16 Trustee's Sale. At a minimum, this issue raises a fact for a jury to decide.

17 C. **The Trustee's Sale is Void Because the Trustee Failed to Provide Proper and**
18 **Adequate Notice Pursuant to A.R.S. § 33-808, Therefore Plaintiff is Not**
19 **Entitled to Possession.**

20 Plaintiff alleges the sale date of the property was listed as 1/14/2010. The Trustee's Deed
21 Upon Sale (Movant's only evidence in the Motion for Relief from Stay) shows a time stamp of
22 07:00 on 1/14/2010. This is a direct violation of ARS 33-808 (4) (B) which provides that "The
23 sale shall be held at the time and place designated in the notice of sale on a day other than a
24 Saturday or legal holiday between 9:00 a.m. and 5:00 p.m. mountain standard time." This
25 constitutes an illegal sale of the property, as the Trustee's Deed Upon Sale was signed and
26 notarized PRIOR to the time when the sale could have occurred on 1/14/2010.

27 There is no evidence, other than counsel's avowal that the sale took place any time other
28 than the time stated on the Trustee's Deed. This raises serious questions as to the validity of the
sale and whether it took place at all or whether counsel for Plaintiff and their employees simply

1 created internal documents indicating a sale took place. This is a question of fact that must be
2 determined by the jury.

3 A.R.S. § 33-808 sets forth the notice requirements for a trustees' sale and provides as
4 follows:

5 A. The trustee shall give written notice of the time and place of the sale
6 legally describing the trust property to be sold *by each of the following methods:*

7 ...

8
9 3. Posting a copy of the notice of sale, **at least twenty days before the date**
10 **of sale in some conspicuous place on the trust property to be sold**, if posting
11 can be accomplished without a breach of the peace. If access to the trust property
12 is denied because a common entrance to the property is restricted by a limited
13 access gate or similar impediment, the property shall be posted by posting notice
14 at that gate or impediment. Notice shall also be posted at one of the places
15 provided for posting public notices at any building that serves as a location of the
16 superior court in the county where the trust property is to be sold. Posting is
17 deemed completed on the date the trust property is posted. The posting of notice
18 at the superior court location is deemed a ministerial act.

19 DATED this 7th day of July, 2010.

20 LAW OFFICES OF KEVIN JENSEN, PLLC

21 By /s/ Kevin Jensen
22 Kevin Jensen
23 Attorneys for Plaintiff

24 **ORIGINAL** of the foregoing filed
25 this 7th day of July, 2010, with:

26 Michael K. Jeanes, Clerk
27 **MARICOPA COUNTY SUPERIOR COURT**
28 222 East Javelina
Mesa, Arizona 85210

COPY of the foregoing mailed
this 7th day of July, 2010, to:

1 Mark S. Bosco
2 Leonard J. McDonald
3 TIFFANY & BOSCO, P.A.
4 2525 E. Camelback Road, Suite 300
5 Phoenix, Arizona 85016
6 *Attorneys for Plaintiff*

7 /s/ Susan Durrant

EXHIBIT 1



FREEDOM MORTGAGE

907 Pleasant Valley Avenue, Suite 3 • Mt Laurel, NJ 08054 • 800.220.3333

3/02/2010

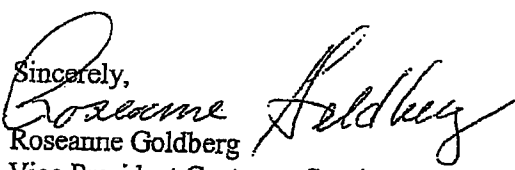
Office of the Clerk of the Superior Court
201 West Jefferson Street
Phoenix Arizona 85003-2205

Rachel Earl
1311 S. Claiborne Ave
Gilbert AZ 85296

Re: Case # CV2010-090616, Superior Court, Maricopa County AZ
Rachel A. Earl, Pltf. vs. Freedom Mortgage Corporation

In reference to the above case please let it be known that Freedom Mortgage Corporation has no interest in the property 1211 S. Claiborne Ave, Gilbert AZ 85296. The mortgage originated on 4/12/2007 was sold to Wells Fargo Home loans on 6/12/2007. Any foreclosure action would have been brought by Wells Fargo and not by Freedom Mortgage Corporation.

Sincerely,



Roseanne Goldberg
Vice President Customer Service
Freedom Mortgage
907 Pleasant Valley Ave
Mt. Laurel, NJ 08054

Cc:
Mark S. Bosco
2525 E. Camelback Rd, Suite 300
Phoenix AZ 85016

Mers
7301 BayMeadows Way
Jacksonville, Fl 32256

Arizona Title Agency
4041 N. Central Ave, No. D-
Phoenix AZ 85012

Exhibit R-17 (page 1 of 2)

EXHIBIT 2

LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Wells Fargo Bank N.A., has made, constituted and appointed, and by these presents does make, constitute and appoint MARK S. BOSCO and MICHAEL A. BOSCO, JR., of the firm of TIFFANY & BOSCO, P.A., 2525 EAST CAMELBACK ROAD, SUITE 300, PHOENIX, ARIZONA 85016, individually and not jointly, its true and lawful attorney in fact for, and in its name, place and stead, and for its use and benefit, for every act customarily and reasonably necessary and appropriate for:


The execution, acknowledgment, recording and delivery of beneficiary's Non Military Affidavit, Notices of Default on Mortgages, and Verifications of Debt wherein the above-named principal is the original or substituted beneficiary or servicing agent for the beneficiary, and Deeds to the Secretary of Veterans Affairs, Secretary of Housing and Urban Development, Deeds to Federal National Mortgage Association, and Deeds to Federal Home Loan Mortgage Corporation, to convey properties in which the Mortgage foreclosed secured a loan guaranteed or insured by the department of Veterans Affairs or Department of Housing and Urban Development, and Deeds and assignment of beneficial interest to the investor on mortgage loans in which Wells Fargo Bank N.A. is the beneficiary of record of the Mortgage.

Giving and granting unto said attorney-in-fact full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done to accomplish the foregoing as the principal above-named might or could do as if personally present, with full powers of substitution and reservation, hereby confirming and ratifying all that the principal's attorney in fact shall lawfully do or cause to be done by virtue of these presents. The undersigned fully acknowledges and understands that said attorney-in-fact is being granted authority to appoint himself or a business in which he has a pecuniary interest as trustee to conduct foreclosures for Wells Fargo Bank N.A. on a for profit basis and has consulted independent counsel regarding same.

By exercise of this limited power, the attorney(s)-in-fact shall indemnify Wells Fargo Bank N.A. from all claims, demands, suits, penalties or actions, and from all attendant losses, costs and expenses for any claims against, or losses or liability of Wells Fargo Bank N.A. for any cause to the extent the same arise out of, or result from, default in the performance of, or the negligent performance of, or willful misconduct regarding any obligation of the attorney(s)-in-fact under this power.

This limited power of attorney shall be effective from the date of execution hereof until December 31, 2009 or such time as Wells Fargo Bank N.A. or its successor revokes it in writing.

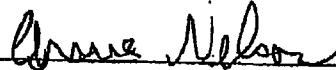
IN WITNESS WHEREOF, Rachael Hendrickson-Browder has hereto set his/her hand and seal this 30th day of October.

Wells Fargo Bank N.A.
Signed: 
Printed name: Rachael Hendrickson-Browder
Title: Vice President Loan Documentation

STATE OF IOWA)
COUNTY OF POLK) ss.

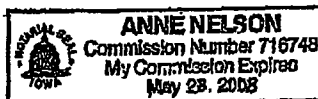
This is to certify that on the 30th day of October, before me, a notary public in and for the State of IOWA, personally appeared Rachael Hendrickson-Browder, whose name is signed to the foregoing, and who is known to me, acknowledged before me on this day that she, being informed of the contents thereof, s/he executed the foregoing document as Vice President Loan Documentation of Wells Fargo Bank N.A., voluntarily for and as the act of said corporation, acting in said capacity, as aforesaid.

Given under my hand this 30th day of October.



Notary public in and for:
My commission expires:

Seal



Expires May 28, 2008

EXHIBIT 3

Presented for recording without liability
for acceptability or sufficiency by
FIRST AMERICAN TITLE.

When Recorded Mail to:

Michael A. Bosco, Jr., Trustee
2525 East Camelback Road, Suite 300
Phoenix, AZ 85016

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER

HELEN PURCELL

20070146894 02/05/2007 04:12

ELECTRONIC RECORDING

85016-2-1-1--

maresa

LIMITED POWER OF ATTORNEY

LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Wells Fargo Bank N.A., has made, constituted and appointed, and by these presents does make, constitute and appoint MARK S. BOSCO and MICHAEL A. BOSCO, JR., of the firm of TIFFANY & BOSCO, P.A., 2525 EAST CAMELBACK ROAD, SUITE 300, PHOENIX, ARIZONA 85016, individually and not jointly, its true and lawful attorney in fact for, and in its name, place and stead, and for its use and benefit, for every act customarily and reasonably necessary and appropriate for:

The execution, acknowledgment, recording and delivery of beneficiary's Non Military Affidavit, Notices of Default on Mortgages, and Verifications of Debt wherein the above-named principal is the original or substituted beneficiary or servicing agent for the beneficiary, and Deeds to the Secretary of Veterans Affairs, Secretary of Housing and Urban Development, Deeds to Federal National Mortgage Association, and Deeds to Federal Home Loan Mortgage Corporation, to convey properties in which the Mortgage foreclosed secured a loan guaranteed or insured by the department of Veterans Affairs or Department of Housing and Urban Development, and Deeds and assignment of beneficial interest to the investor on mortgage loans in which Wells Fargo Bank N.A. is the beneficiary of record of the Mortgage.

Giving and granting unto said attorney-in-fact full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done to accomplish the foregoing as the principal above-named might or could do as if personally present, with full powers of substitution and reservation, hereby confirming and ratifying all that the principal's attorney in fact shall lawfully do or cause to be done by virtue of these presents. The undersigned fully acknowledges and understands that said attorney-in-fact is being granted authority to appoint himself or a business in which he has a pecuniary interest as trustee to conduct foreclosures for Wells Fargo Bank N.A. on a for profit basis and has consulted independent counsel regarding same.

By exercise of this limited power, the attorney(s)-in-fact shall indemnify Wells Fargo Bank N.A. from all claims, demands, suits, penalties or actions, and from all attendant losses, costs and expenses for any claims against, or losses or liability of Wells Fargo Bank N.A. for any cause to the extent the same arise out of, or result from, default in the performance of, or the negligent performance of, or willful misconduct regarding any obligation of the attorney(s)-in-fact under this power.

This limited power of attorney shall be effective from the date of execution hereof until December 31, 2009 or such time as Wells Fargo Bank N.A. or its successor revokes it in writing.

IN WITNESS WHEREOF, Rachael Hendrickson-Browder has hereunto set his/her hand and seal this 30th day of October.

Wells Fargo Bank N.A.

Signed: 

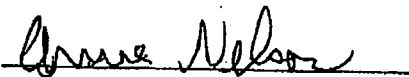
Printed name: Rachael Hendrickson-Browder

Title: Vice President Loan Documentation

STATE OF IOWA)
COUNTY OF POLK) ss.

This is to certify that on the 30th day of October, before me, a notary public in and for the State of IOWA, personally appeared Rachael Hendrickson-Browder, whose name is signed to the foregoing, and who is known to me, acknowledged before me on this day that she, being informed of the contents thereof, s/he executed the foregoing document as Vice President Loan Documentation of Wells Fargo Bank N.A., voluntarily for and as the act of said corporation, acting in said capacity, as aforesaid.

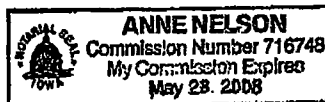
Given under my hand this 30th day of October.



Notary public in and for:

My commission expires:

Seal



Expires May 28, 2008

EXHIBIT 4

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20090041298 01/16/2009 04:11
ELECTRONIC RECORDING

RECORDING REQUESTED BY:

2900234-1-3-1--
Esquivela

WHEN RECORDED MAIL TO:
Wells Fargo Home Mortgage Inc
Attn: F/C Dept.
3476 Stateview Boulevard
Fort Mill SC 29715

T&B NO.: 09-40173
LOAN NO.: 0159737428

APN: 313-10-317

CORPORATION ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned corporation hereby grants, assigns and transfers to U.S. Bank National Association, as Trustee for GSAA 2007-9 by its Attorney in fact Wells Fargo Bank, N.A., successor by merger to Wells Fargo Home Mortgage Inc. all beneficial interest under that certain Deed of Trust dated 04/12/2007 executed by Rachael A. Earl, a married woman as her sole and separate property Trustor, to Arizona Title Agency, Inc. Trustee, and recorded on 04/17/2007 as Instrument No. 2007-0446763 on in Book Page of Official Records of Maricopa County, AZ describing the land therein:

AS PER DEED OF TRUST MENTIONED ABOVE.

Together with the Note or Notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust

January 15, 2009 Effective Date: 12/08/2008

Mortgage Electronic Registration Systems, Inc.

By: 
It's: Assistant Secretary for MERS, Inc.

STATE OF ARIZONA
COUNTY OF MARICOPA

On January 15, 2009, before me, Ann Armstrong, a Notary Public for said State, personally appeared Jennifer Hamlin, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of ARIZONA that the foregoing is true and correct.

WITNESS my hand and official seal.

Signature

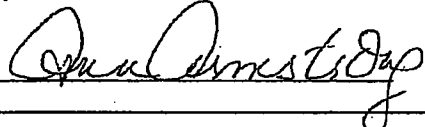




EXHIBIT 5

ARIZONA

Department of State



UNITED STATES OF AMERICA

STATE OF ARIZONA

I, KEN BENNETT, Arizona Secretary of State, do hereby certify that a digital search of the notary database, on April 30, 2010, reveals that JENNIFER HAMLIN, was commissioned as an Arizona Notary Public for the following terms in the County of MARICOPA, State of Arizona.

Commission Term(s):

January 20, 2006 - January 19, 2010

January 20, 2002 - January 19, 2006

January 20, 1998 - January 19, 2002

December 26, 1993 - December 25, 1997

December 26, 1989 - December 25, 1993

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Arizona. Done at Phoenix, the capital, on this day, April 30, 2010.



A handwritten signature in black ink, appearing to read "Ken Bennett", is written over a horizontal line.

Ken Bennett
Secretary of State

EXHIBIT 6



KEN BENNETT
SECRETARY OF STATE
STATE OF ARIZONA



May 3, 2010

Dear Mr. Earl:

Below, please find the information you requested seeking certification of the places of employment that the two notaries in question provided on their applications to become notaries public. This information is also available on the Secretary of State's website at: http://www.azsos.gov/scripts/Notary_Search.dll

Notary Jennifer Hamlin
Commission Number 69558
Tiffany and Bosco PA
2525 E CAMELBACK RD STE 300
Phoenix, AZ 85016

Notary Ann Armstrong
Commission Number 257458
Tiffany and Bosco
2525 E. CAMELBACK RD. #300
Phoenix, AZ 85016

While the Secretary of State cannot verify that the above listed employment information is current or accurate, this is the information reflected in our database that the notaries provided to our office.

Sincerely,

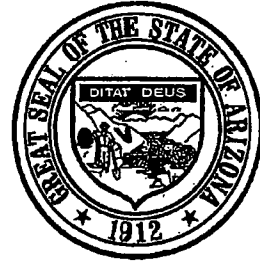
Holly Textor
Notary Unit Supervisor
602-542-4758

1700 W. Washington Street, 7th Floor
Phoenix, Arizona 85007-2888
Telephone (602) 542-4285 Fax (602) 542-1575
www.azsos.gov

EXHIBIT 7

ARIZONA

Department of State



UNITED STATES OF AMERICA

STATE OF ARIZONA

I, KEN BENNETT, Arizona Secretary of State, do hereby certify that a digital search of the notary database, on April 30, 2010, reveals that ANN ARMSTRONG, was commissioned as an Arizona Notary Public for the following terms in the County of MARICOPA, State of Arizona.

Commission Term(s):

January 16, 2010 - January 15, 2014

January 16, 2006 - January 15, 2010

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Arizona. Done at Phoenix, the capital, on this day, April 30, 2010.



A handwritten signature in black ink, appearing to read "Ken Bennett", is written over a horizontal line.

Ken Bennett
Secretary of State



**KEN BENNETT
SECRETARY OF STATE
STATE OF ARIZONA**



May 3, 2010

Dear Mr. Earl:

Below, please find the information you requested seeking certification of the places of employment that the two notaries in question provided on their applications to become notaries public. This information is also available on the Secretary of State's website at: http://www.azsos.gov/scripts/Notary_Search.dll

Notary Jennifer Hamlin
Commission Number 69558
Tiffany and Bosco PA
2525 E CAMELBACK RD STE 300
Phoenix, AZ 85016

Notary Ann Armstrong
Commission Number 257458
Tiffany and Bosco
2525 E. CAMELBACK RD. #300
Phoenix, AZ 85016

While the Secretary of State cannot verify that the above listed employment information is current or accurate, this is the information reflected in our database that the notaries provided to our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Holly Textor".

Holly Textor
Notary Unit Supervisor
602-542-4758

1700 W. Washington Street, 7th Floor
Phoenix, Arizona 85007-2888
Telephone (602) 542-4285 Fax (602) 542-1575
www.azsos.gov

EXHIBIT 8

WHEN RECORDED MAIL TO:

Tiffany & Bosco, P.A.
Michael A. Bosco, Jr.
2525 E. Camelback Rd. Ste. 300
Phoenix, AZ 85016
Great American Title Agency

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

20090041299 01/16/2009 04:11
ELECTRONIC RECORDING

2900234-1-3-2--
Esquivela

SPACE ABOVE THIS LINE FOR RECORDER'S USE

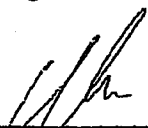
SUBSTITUTION OF TRUSTEE
09-40173 Earl

WHEREAS, Rachael A. Earl, a married woman as her sole and separate property was the original Trustor(s), Arizona Title Agency, Inc. was the original Trustee and Mortgage Electronic Registration Systems, Inc. was the original Beneficiary under that certain Deed of Trust dated 04/12/07 and recorded on 04/17/07 as Recording No./Book-Page 2007-0446763, of Official Records of Maricopa County, State of Arizona and described as:

Lot 196, AGRITOPIA, PHASE 2A, according to Book 691 of Maps, Page 4, and Affidavit of Correction recorded as 2004-1145385, records of Maricopa County, Arizona.

WHEREAS, the undersigned present beneficiary under the said Deed of Trust hereby appoints Michael A. Bosco, Jr., whose address is 2525 East Camelback Road, Suite 300, Phoenix, Arizona 85016, as Successor Trustee under said Deed of Trust, and is qualified to act as Successor Trustee per ARS Section 33-803 (A)2, as a member of the Arizona State Bar.

U.S. Bank National Association, as Trustee for GSAA 2007-9 by its Attorney in fact Wells Fargo Bank, N.A., successor by merger to Wells Fargo Home Mortgage Inc.

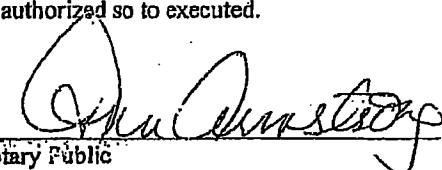

By: Mark S. Bosco, Attorney at Law
By Limited Power of Attorney

State of Arizona)

County of Maricopa)

This instrument was acknowledged on January 15, 2009, before me the undersigned, Notary Public, by Mark S. Bosco, Attorney at Law by Limited Power of Attorney for the above corporation and that he executed the within instrument in behalf of said corporation as Beneficiary and being authorized so to executed.




Notary Public

Exp. date

EXHIBIT S

1 **TIFFANY & BOSCO**
2 **P.A.**

3 2525 EAST CAMELBACK ROAD
4 PHOENIX, ARIZONA 85016
5 TELEPHONE: (602) 255-6000
6 FACSIMILE: (602) 255-0192

COPY

7 Mark S. Bosco
8 State Bar No. 010167
9 Leonard J. McDonald
10 State Bar No. 014228
11 Attorneys for Plaintiff

12 10-01475

13 **IN THE SUPERIOR COURT OF ARIZONA**
14 **IN AND FOR THE COUNTY OF MARICOPA**

15 U.S. Bank National Association, as Trustee for
16 GSAA 2007-9 by its Attorney in fact Wells Fargo
17 Bank, N.A., successor by merger to Wells Fargo
18 Home Mortgage Inc.

19 Plaintiff,

20 vs.

21 Rachael Earl, JOHN DOE OCCUPANT 1-5 AND
22 JANE DOE OCCUPANT 1-5,

23 Defendant

Case No. CV2010-006146

AMENDED ORDER

Forcible Detainer after Trustee's Sale
pursuant to A.R.S. {12-1173.01, et seq.}

24 On this day came on for consideration Plaintiff's Motion to Correct Clerical Mistake relating to
25 the August 19, 2010 judgment previously entered in this action. Good cause appearing, it is ordered
26 that the August 19, 2010 judgment is amended as set forth herein to correct the clerical error regarding
the property address.

1 U.S. Bank National Association, as Trustee for GSAA 2007-9 by its Attorney in fact Wells Fargo
2 Bank, N.A., successor by merger to Wells Fargo Home Mortgage Inc. vs. Earl

3 Case No.: CV2010-006146

4 Page Two

5 IT IS ORDERED, that each Defendant's right to possession of the property located at 1311
6 South Claiborne Avenue, Gilbert, AZ 85296, is terminated and Plaintiff is entitled to immediate
7 possession of the property and all fixtures, permanent improvements and appurtenances located
8 thereon.

9 IT IS FURTHER ORDERED that Defendant shall immediately surrender possession of the
10 property to Plaintiff and, if possession is not surrendered to Plaintiff on or before August 24, 2010, the
11 Clerk of the Court shall issue on or after August 25, 2010 a Writ of Restitution to the Sheriff of
12 Maricopa County commanding him to forcibly remove Defendant and anyone holding and claiming a
13 right to possession under them and restore possession of the property to Plaintiff.

14 IT IS FURTHER ORDERED that any hearings scheduled in this matter are hereby vacated.

15 IT IS FURTHER ORDERED dismissing the fictional defendants named in the Complaint.

16 DONE IN OPEN COURT this 23 day of November, 2010.

17 COMMISSIONER MICHAEL BARTH

18 Commissioner of the Superior Court
19
20
21
22
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26